Notice of Hearing
Police Services Act, R.S.O. 1990, c.P.15, as amended

TO: Police Constable Alexander WALLACE (9300)
AND TO: Police Constable Dominic SEGUIN (8423)

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID WITHOUT GOOD AND SUFFICIENT CAUSE MAKE AN UNLAWFUL OR UNNECESSARY ARREST, contrary to Section 2(1)(g)(i) of the Schedule Code of Conduct of Ontario Regulation 123/98 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended.

STATEMENT OF PARTICULARS:

Being a member of the Toronto Police Service attached to Number 51 Division, you were assigned to uniform duties.

On Sunday, June 27, 2010, you were on duty and assigned to the G20 Summit detail.

You assisted in the arrest of E.G.B, for wearing a disguise with the intent to commit a criminal offence without having the requisite grounds to do so.

In so doing, you have committed misconduct in that you did without good and sufficient cause make an unlawful or unnecessary arrest.

AND TO: Sergeant Nancy McLean (903)

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID ACT IN A DISORERLY MANNER OR IN A MANNER PREJUDICIAL TO DISCIPLINE OR LIKELY TO BRING DISCREDIT UPON THE REPUTATION OF THE POLICE SERVICE, contrary to Section 2(1)(a)(xi) of the Schedule Code of Conduct of Ontario Regulation 123/98 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended.

STATEMENT OF PARTICULARS:

Being a member of the Toronto Police Service, attached to Number 51 Division, you were assigned to uniform duties.

On Sunday, June 27, 2010, you were on duty and assigned to the G20 Summit detail.

You encouraged or incited officers under your command to insult E.G.B. during their interaction with him.

In so doing, you have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Police Service.

HEARING DATES:

June 2, 3, 4, 5, 6, 2014.
July 29, 2014.

COUNSEL:

Prosecution:	B.J. VanNiejenhuis Edward Marrocco
Defence:	H.G. Black, Q.C.
Eloï Gourde-Bureau:	Soloman Lam

Background:

G20 meetings were held in the City of Toronto during the week of June 21, 2010. There was an extensive police presence in downtown Toronto on Saturday, June 26, 2010.

Notwithstanding this police presence, there was wide-spread rioting on the Saturday initiated by the "Black Bloc" and joined in by locals and outsiders who had come to Toronto to take part in the protest against the G20 meetings.

The riots resulted in damage to private and public property with breakage of store fronts and burning of police vehicle and causing injury to police officers.

It was in this atmosphere that the police were organized to expect similar activity on Sunday, June 27, 2010. Police intelligence expected increased violence on the Sunday with greater damage to property and more physical violence on the part of the rioters.

The street officers were advised to locate and arrest individuals with backpacks, masks, containers with inflammable liquids, and costumed in black clothing with bandanas or masks covering their faces.

EVIDENCE:

Eloï Gourde-Bureau

The complainant is a resident of Gatineau, Quebec, and at the material times was a director of a charitable organization dealing with persons with financial problems. He and his fiancée, Jennifer Vales, decided that they would attend the G20 meetings as observers. Mr. Gourde-Bureau (hereinafter "Bureau") was to bicycle from Ottawa to Toronto during the week of June 21st and Ms. Vales was to take the bus and meet Bureau on Saturday, June 26, 2010.

The couple met up in Toronto on Saturday, June 26, and they went to the demonstrations at Queen's Park not long after she arrived. The couple joined in the demonstration walk but did not get involved in the violent activities. They did witness the police car on fire and members of the "Black Bloc" causing damage to public and private property.

After the demonstration, the couple returned to the hostel hotel, went out for dinner and then returned to the hotel at 7 p.m..

At approximately 9 a.m. on Sunday, June 27th, Bureau together with Ms. Vales and friend David Clement, walked to a Tim Horton's in Queen's Park to meet up with another friend, Samuel Dube-Marceau. At that time, Bureau was wearing jeans, a white t-shirt and had the sleeve of an orange t-shirt around his neck. Bureau stated they were proceeding in a northerly direction on University Avenue towards Queen's Park. Bureau testified that the purpose of the cut sleeve was to protect himself from a possible tear gas attack but the sleeve was too small to completely cover his face and was never worn in that fashion.

Before the three persons reached Queen's Park, they were intercepted by a police bicycle patrol who approached them from behind. The police stopped the trio and in English told them to "drop your bags, you're under arrest" and to "stop moving". Mr. Clements was the only one carrying a backpack and the two others had no bags.

Bureau was pushed by two police officers into a wire construction fence and offered no resistance. During this time, Bureau testified that he was told he was under arrest without any specific charge. It was at this time that Sgt. McLean told the officers to keep Bureau against the fence and started to swear at Bureau in English and French. She called the trio "fucking anarchists", "retourner à votre pays au Quebec" and "you're only here to smash up the city, go home". One of the male officers advised Bureau that he would be raped by a large man named, "Bubba". Bureau was photographed twice and placed in a police vehicle for transportation to the Eastern Avenue Detention Centre without being read his rights to counsel. He remained at the Detention Centre for 32 hours, released without charge, and told to go back to Gatineau.

On cross-examination, Bureau testified that he never told any reporter or anyone else besides possibly his mother and father what had happened in Toronto. Notwithstanding being shown Exhibits 8 and 9; newspaper articles setting out an interview with local reporter, Patrick Duquette, he continued to deny any communication with the press where he could have mentioned the alleged violence of the arrest and the abusive behaviour towards French-Canadians and the unsanitary conditions at the Detention Centre.

Jennifer Vales

Ms. Vales is presently 27 years of age and married to Mr. Gourde-Bureau. She is presently employed at the Federal Human Resources and Skills Development Canada.

Ms. Vales testified that she arrived in Toronto on Saturday, June 26th, by bus and met with Bureau at the hotel and prepared to go to Queen's Park to join the protest march. After the march and viewing the resultant damage and activities of the "Black Bloc", the couple had supper and returned to the hotel.

Ms. Vales testified that at approximately 9 a.m. on Sunday, June 27th, the couple together with David Clement, left the hotel to meet up with Samuel, whose surname she did not know, to have breakfast at Tim Horton's at Queen's Park. Bureau was wearing an orange sleeve around his neck to protect himself from the presence of tear gas. Clement was wearing a black t-shirt, shorts and shoes and may have had a bag. Ms. Vales was wearing a green tank top, blue shorts and a white paper mache mask which was hanging from her shorts by an elastic. Ms. Vales testified that the mask served two purposes: to hide her identity from her employer and to assist if there was a tear gas attack.

As the trio was walking in a northerly direction on University Avenue and speaking in French, they were grabbed violently from behind by a number of members of a police bike patrol. She was told that she and the others were arrested for being disguised with intent. All three were taken to the ground and pressed against a construction fence. While in this position, the trio were insulted in both English and French. She was refused the request that her rights to counsel be given in French.

Ms. Vales was taken to the Detention Centre and subsequently after 10 hours of detention, was released without charges.

Sgt. Nancy McLean

Sgt. McLean (hereinafter "McLean"), has been a police officer since 1992. She is fluent in French as her mother's first language is French.

Sgt. McLean attended a briefing at the Chelsea Hotel on Sunday, June 27th, at 9:00 a.m.. The general police intelligence was to expect an even greater and more violent demonstration on this Sunday as the

one that had been experienced on the Saturday. Emphasis was placed on the use of disguises by the demonstrators.

After the briefing, Sgt. McLean and her group of 15 bicycle officers left their hotel and proceeded in a northerly direction on University Avenue. She was riding in the middle of the group when she spotted the trio of Bureau, Vales and Clement. What she first noticed was the bright orange sleeve "over Bureau's face". She testified that he was wearing the sleeve from his nose down to his neck. She also noted the immediate engagement of the front riding officers, Seguin and Wallace, with Bureau. When Sgt. McLean arrived upon the scene, Bureau was already in custody and up against a construction fence as were Ms. Vales and Mr. Clement. Sgt. McLean denied any pushing or punching of the prisoners or any other abusive activity as previously testified to by Bureau or Ms. Vales. Her understanding was the trio had been arrested for disguise with intent to commit the indictable offence of mischief.

Sgt. McLean adamantly denied that she made any derogatory remarks about French-Canadians or ordered the officers to physically abuse the prisoners.

P.C. Dominic Seguin

P.C. Seguin (hereinafter "Seguin") is 38 years of age and testified that French is his first language. He was raised and educated in the French language and has been a police officer for approximately 12 years.

On Sunday, June 27th, he was part of the police bicycle patrol led by Sgt. McLean. In the briefing that morning, it was stressed that all parties wearing any type of scarf, mask or bandana were arrestable for "disguise with intent". There was intelligence that there would be a repeat of the Saturday rioting commencing at Queen's Park.

Seguin was proceeding in a northerly direction on University Avenue when he observed two males and a female walking in a northerly direction and speaking in French. Although he could not hear clearly what was being said, he noted the Bureau was wearing an orange bandana covering his face to the bridge of his nose with only his eyes showing. At this point, Seguin formed the grounds to believe that Bureau was wearing a "disguise with intent" together with other "multiple points".

Seguin and his colleague, PC Wallace, got off their bikes and approached the trio of persons. PC Wallace took hold of Bureau and Wallace placed Bureau under arrest and zip-tied him. Seguin removed the bandana as evidence.

Seguin denies that Bureau was physically abused while being arrested. He also denies that he or Sgt. McLean were asked by Bureau or Vales for their rights in French and specifically denies McLean made any anti-French comments to any of the three prisoners.

PC Alexander Wallace

Police Constable Alexander Wallace (hereinafter "Wallace") is 33 years of age and has been a police officer since 2005.

Wallace attended a briefing on Sunday, June 27th, at 9:00 a.m.. He was advised that persons covering their faces with a mask or bandana were arrestable for disguise with intent. With this information, he became part of a bike patrol headed by Sgt. McLean. This patrol was travelling in a northerly direction on University Avenue towards College Park. At that time, Wallace viewed a trio of persons walking in a northerly direction who were speaking in French. He further observed that one of the males was wearing a neon orange bandana covering the lower part of his face; between his chin and nose. He biked past him, got off his bike and approached Bureau and advised him that he was under arrest for disguise with intent. Wallace placed Bureau up against a construction fence and handcuffed him with zip ties. At this point Seguin removed the orange sleeve from Bureau's face. Wallace then read Bureau his rights to counsel from the back of his police memo book and asked Bureau if he understood. Bureau answered yes and gave Wallace a number of a lawyer. Shortly thereafter, Bureau shouted to others on the street that his father was the Mayor of Gatineau and would not be happy with the Toronto Police Service.

Wallace testified that Bureau was not physically abused nor were any anti-French remarks made by Seguin or McLean or by himself. He also testified that Sgt. McLean did not encourage any physical abuse against Bureau.

PC Sean Windzar

PC Windzar (hereinafter "Windzar") has been a member of the York Regional Police Force since 2006.

Windzar was a member of the bike patrol headed by Sgt. McLean. He also noticed two males and a female walking northerly on University Avenue at approximately 10 a.m.. He also noted that one of the males had an orange bandana on the lower portion of his face. Windzar got off his bike and secured the area where the trio was being placed under arrest.

PC Sharad Arshad

PC Arshad (hereinafter "Arshad") has been a member of the Toronto Police Service since 2006.

Arshad was part of the bike patrol headed by Sgt. McLean on Sunday, June 27th. He testified that the patrol was travelling in a northerly direction on University Avenue south of College Street when he observed a female walking in a northerly direction on the east sidewalk with a white mask covering her face. She suddenly took the mask off and put it on her waist which caused Arshad to become suspicious.

Arshad took control of Ms. Vales as the mask was similar to ones being worn at previous demonstrations. Ms. Vales was agitated and continuously called Arshad a "fascist" and refused to listen to Arshad reading the rights to counsel for her. At the time of the arrest for disguise with intent, Ms. Vales possessed the mask, keys, earplugs and plastic bags in her pocket. Arshad did not complete the "hot sheet" and has no explanation that Ms. Vales wanted her rights to counsel to be given to her in French as set out in the hot sheet.

PC Andrew Blunk

PC Andrew Blunk (hereinafter "Blunk") has been a Toronto police officer since 2003.

On Sunday, June 27th, he was part of a bike patrol unit headed by Sgt. McLean. As the unit was proceeding in a northerly direction on University Avenue nearing College Street and Queen's Park. PC Blunk noted two males and one female walking northerly on the east side of University Avenue and heard that they were speaking French. One of the males, eventually identified as David Clement, was

wearing a white industrial filter mask with a yellow elastic around his chin and was carrying a backpack. Blunk saw another member of his unit, PC Otton, arrest David Clement for disguise with intent and gave Clement his rights to counsel. Mr. Clement started to resist and Blunk assisted Otton in taking control of the prisoner. Blunk searched Clement's backpack and found Clement's driver's license from Quebec, eye goggles, 6 more filter masks, some earplugs and a lighter.

Patrick Duquette

Mr. Duquette has been a journalist in the Ottawa area for approximately 14 years for the newspaper, "Le Droit". He studied at the University of Sherbrooke and in June, 2010, he was the municipal affairs reporter for the paper.

Mr. Duquette heard on the radio that a person arrested in Toronto during the G20 meeting claimed to be the son of the Mayor of Gatineau. Mr. Duquette left a telephone message for Bureau in Gatineau to have Bureau call him. Bureau phoned Duquette less than 24 hours after his release from custody and from his telephone conversation, Duquette wrote his article (Exhibit 8); a version of which was printed on June 29th and fully published on June 30th. In the article and the interview, Bureau mainly complained of the conditions in the detention centre and the misery of the persons arrested. The quotations in Exhibit 8 came solely from Bureau. Bureau did not mention anything about the conduct of a woman police sergeant and absolutely nothing of being verbally abused for speaking French and coming from Quebec. Mr. Duquette stated that if Bureau had told him that the officers had said "you are a fucking Frenchman", this would be the lead of Duquette's article. The telephone conversation lasted 10 to 15 minutes and there was only one conversation.

CONCLUSION:

The burden of proof is upon the prosecution and to prove the allegation of misconduct as against the three officers by that of "clear and convincing" evidence. There must be weighty, cogent, and reliable evidence upon which a trier of fact, acting with care and caution, can come to a fair and reasonable conclusion that the officer(s) is guilty of misconduct.

Reference: Daniel Allan vs. PC James Munro (July 27, 1994 – Board of Inquiry) at page 10.

This evidence has to withstand the test of credibility and reliability thereof. The complaints as against the three officers are as follows:

(a) PC's Seguin and Wallace committed misconduct by making an unlawful or unnecessary arrest of Bureau.

(b) Sgt. McLean committed misconduct by acting in a disorderly manner.

Was the evidence of the complainant and witnesses "clear and convincing"?

The evidence of physical violence to the person has been described by Bureau and Ms. Vales but there is no evidence of this violence in the photographs in Exhibit 7 and 10. There were also no complaints made to the reporter Duquette during the interview two days after the incident. In addition, the evidence of Bureau set out in the newspaper report of Mr. Duquette is most telling and troubling. Bureau was immediately cross-examined by Mr. Black on his interaction with Mr. Duquette. Bureau insisted that he spoke with no one in regards to what happened on Sunday, June 27th. Bureau stated that any quotations in the articles were fabricated and not sourced by any interviews with him. He also testified in this hearing that he had not spoken to anyone but maybe briefly spoke to his parents as to his experience in Toronto.

Where the evidence of Mr. Duquette is in conflict with the evidence of Bureau, I accept the evidence of Mr. Duquette. Mr. Duquette had no interest to minimize the police treatment of Bureau and Ms. Vales. The denials and contradictions by Bureau of Duquette's evidence and Bureau's insistence that he did not discuss his evidence with anyone taints the complainant's other evidence of the incident. I am left in doubt and find that the prosecution has failed to satisfy its onus of presenting "clear and convincing" evidence of the guilt of the accused on these charges.

These charges will therefore be dismissed as against Sgt. Nancy McLean, PC Alexander Wallace, and PC Dominic Seguin.

DATED at Toronto this 7th day of November, 2014.

Walter S. Gonet
Hearing Officer